

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EVAN JOHNSON, JOSH GRAY, and
DYLAN COOK,

Plaintiffs,

v.

HYTECH POWER, LLC., a Washington
limited liability company; TOM
GIBBONS, THE ESTATE OF S.B.
JOSEPH CLARK; CHASE C.
ENGELHART and MARGARET A.
CLARK, Co-Personal Representatives of
the ESTATE OF S.B. JOSEPH CLARK,
Deceased; CHASE C. ENGELHART,
individually; THOMAS GIBBONS,
individually and his marital community
with JANE DOE GIBBONS, his spouse;
AVIATION PARTNERS, INC., a
Washington corporation;
AVIATION PARTNERS, INC., a Washington
corporation; APB WINGLETS COMPANY,
LLC, a Foreign Limited Liability Company;
and AVIATION PARTNERS BOEING
WINGLETS II, LLC, a multiemployer health
plan,

Defendants.

No. 2:20-cv-01676-RAJ

ESTATE'S ANSWER TO AMENDED
COMPLAINT

Defendants Chase C. Englehart and Margaret A. Clark, Co-Personal Representatives of
the Estate of S.B. Joseph Clark, on behalf of the Estate of S.B. Joseph Clark (collectively, the

1 “Estate”), answer the allegations to the Amended Complaint filed by Plaintiffs (“Plaintiffs”), as
2 follows:

3 **I. PARTIES**

4 1. The Estate admits that Plaintiff Evan Johnson (“Johnson”) was employed by
5 HyTech Power, LLC (“HyTech”) and that he lived in the State of Washington at least at some
6 times. The Estate lacks sufficient information to admit or deny the allegations as to Johnson’s
7 place of residency or what he contends to be “all relevant times,” and on that basis denies those
8 allegations and otherwise denies any other allegations in paragraph 1 of the Amended Complaint.

9 2. The Estate admits that Plaintiff Josh Gray (“Gray”) was employed by HyTech and
10 that he lived in the State of Washington at least at some times. The Estate lacks sufficient
11 information to admit or deny the allegations as to Gray’s place of residency or what he contends
12 to be “all relevant times,” and on that basis denies those allegations and otherwise denies any
13 other allegations in paragraph 2 of the Amended Complaint.

14 3. The Estate admits that Plaintiff Dylan Cook (“Cook”) was employed by HyTech
15 and that he lived in the State of Washington at least at some times. The Estate lacks sufficient
16 information to admit or deny the allegations as to Gray’s place of residency or what he contends
17 to be “all relevant times,” and on that basis denies those allegations and otherwise denies any
18 other allegations in paragraph 3 of the Amended Complaint.

19 4. Paragraph 4 of the Amended Complaint sets forth legal conclusions, not factual
20 allegations, for which no response is required.

21 5. The Estate admits that each of the plaintiffs was an employee of HyTech, which is
22 a Washington limited liability company, and that as employees they were afforded certain
23 benefits from HyTech, including being enrolled in a group health insurance plan of Regence
24 BlueShield. Paragraph 5 of the Amended Complaint otherwise sets forth legal conclusions, not
25 factual allegations, for which no response is required.
26

1 6. The Estate admits that Thomas (Tom) Gibbons (“Gibbons”) is married and is a
2 resident of King County, Washington. Gibbons is, and has been, a duly appointed member of the
3 Board of HyTech, was selected for that position by JC Aviation Inc. (“JCAI”), and that he
4 became chairman of the Board of HyTech following the death of S.B. Joseph Clark (“Clark”)
5 who was the chairman at the time of his death. The last sentence of paragraph 6 of the Amended
6 Complaint sets forth legal conclusions, not factual allegations, for which no response is required.
7 The Estate denies any other allegations in paragraph 6 of the Amended Complaint.

8 7. The Estate admits the allegations in paragraph 7 of the Amended Complaint.

9 8. The Estate admits that Chase C. Englehart (“Englehart”) is unmarried and is a
10 resident of King County, Washington. Englehart is and has been a member of the Board of
11 HyTech. The Estate denies any other allegations in paragraph 8 of the Amended Complaint.

12 9. The Estate admits the allegations in paragraph 9 of the Amended Complaint.

13 10. The Estate lacks sufficient information to admit or deny any factual allegations in
14 paragraph 10 of the Amended Complaint, and on that basis denies those allegations.

15 11. The Estate admits the allegations in the first sentence of paragraph 11 of the
16 Amended Complaint. The Estate denies any other allegations in paragraph 11 of the Amended
17 Complaint.

18 12. The Estate lacks sufficient information to admit or deny any factual allegations in
19 paragraph 12 of the Amended Complaint, and on that basis denies those allegations.

20 13. Paragraph 13 of the Amended Complaint sets forth legal conclusions, not factual
21 allegations, for which no response is required.

22 II. JURISDICTION AND VENUE

23 14. Paragraph 14 of the Amended Complaint sets forth legal conclusions, not factual
24 allegations, for which no response is required.

III. BACKGROUND FACTS

26. The Estate admits the allegations in paragraph 26 of the Amended Complaint.

1 27. The Estate admits that Johnson has submitted a claim against the Estate, which
2 claim speaks for itself. The Estate denies any other allegations in paragraph 27 of the Amended
3 Complaint.

4 28. The Estate admits the allegations in paragraph 28 of the Amended Complaint.

5 29. The Estate lacks sufficient information to admit or deny any factual allegations in
6 paragraph 29 of the Amended Complaint, and on that basis denies those allegations.

7 30. The Estate lacks sufficient information to admit or deny any factual allegations in
8 paragraph 30 of the Amended Complaint, and on that basis denies those allegations.

9 31. The Estate lacks sufficient information to admit or deny any factual allegations in
10 paragraph 31 of the Amended Complaint, and on that basis denies those allegations.

11 32. The Estate denies the allegations in paragraph 32 of the Amended Complaint on
12 the basis that it is too vague to allow for an answer.

13 33. The Estate lacks sufficient information to admit or deny any factual allegations in
14 paragraph 33 of the Amended Complaint, and on that basis denies those allegations.

15 34. The Estate admits that plaintiffs' employment with HyTech was terminated
16 effective on or before April 30, 2020. The Estate lacks sufficient information to admit or deny
17 the remaining allegations in paragraph 34 of the Amended Complaint, and on that basis denies
18 those allegations.

19 35. The Estate admits that one or more of the plaintiffs continued to engage in
20 activities using the property, including intellectual property, of HyTech after being terminated
21 from their employment from HyTech, without the knowledge of all the members of the Board of
22 HyTech or the authorization of HyTech. The Estate denies any other allegations in paragraph 35
23 of the Amended Complaint.

24 36. The Estate lacks sufficient information to admit or deny the allegations in
25 paragraph 36 of the Amended Complaint, and on that basis denies those allegations.
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37. The Estate lacks sufficient information to admit or deny the allegations in paragraph 37 of the Amended Complaint, and on that basis denies those allegations.

38. The Estate lacks sufficient information to admit or deny the allegations in paragraph 38 of the Amended Complaint, and on that basis denies those allegations.

39. The Estate lacks sufficient information to admit or deny the allegations in paragraph 35 of the Amended Complaint, and on that basis denies those allegations.

**FIRST CAUSE OF ACTION:
Johnson's claim for unpaid wages**

40. The Estate incorporates its responses to the previous paragraphs of the Amended Complaint.

41. The Estate denies the allegations in paragraph 41 of the Amended Complaint.

42. The Estate denies the allegations in paragraph 42 of the Amended Complaint.

43. The Estate denies the allegations in paragraph 43 of the Amended Complaint.

44. The Estate denies the allegations in paragraph 44 of the Amended Complaint.

**SECOND CAUSE OF ACTION:
Wrongful denial of COBRA coverage under 29 U.S.C. §§ 1161 et seq. and 1132.**

45. The Estate incorporates its responses to the previous paragraphs of the Amended Complaint.

46. Paragraph 46 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

47. Paragraph 47 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

48. Paragraph 48 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

**THIRD CAUSE OF ACTION:
COBRA notice violations (failure to provide notice of continuation benefits) under
29 U.S.C. §§ 1161 et seq. and 1132.**

49. The Estate incorporates its responses to the previous paragraphs of the Amended Complaint.

50. Paragraph 50 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

51. Paragraph 51 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

52. Paragraph 52 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

53. Paragraph 53 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

**FOURTH CAUSE OF ACTION:
Attorney fees and costs under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1)**

54. Paragraph 54 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

55. Paragraph 55 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

DAMAGES

56. The Estate incorporates its responses to the previous paragraphs of the Amended Complaint.

57. Paragraph 57 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

58. Paragraph 58 of the Amended Complaint is directed at other parties and thus does not require a response from the Estate.

59. The Estate denies the allegations in paragraph 59 of the Amended Complaint.

AFFIRMATIVE DEFENSES

The claims for ERISA or COBRA relief are not understood to be filed against the Estate, nor could they be due to lack of submitting timely notice of claim to the Estate. Thus, the Estate understands only Evan Johnson's First Cause of Action to be pursued against the Estate. The Estate reserves all affirmative defenses against the other claims if any of the plaintiffs seeks to pursue them against the Estate.

1. Plaintiff fails to state a claim upon which relief is available to him.
2. Plaintiff's claims are barred by waiver or estoppel.
3. Plaintiff's claims are barred by material misrepresentations by him, HTP or its principals, including but not limited to their representation as to the state or efficacy of the Technology and that they owned the Technology without disclosure that Karma Power asserted and was asserting otherwise.
4. Plaintiff's claims are barred based on frustration of purpose or impossibility of performance.
5. Plaintiff's claims are barred based on mutual mistake.
6. Plaintiff's claims are barred by the business judgment rule.
7. Plaintiff's claims are barred by limitations of liability in the contracts.
8. Plaintiff's claims are barred by statutory limitations of liability for board members.
9. Plaintiff's claims are barred by defendants' good faith conduct.
10. Plaintiff's claims are barred by bad faith conduct of plaintiff, HTP or its principals.
11. Plaintiff's claims are barred by the unclean hands of plaintiff, HTP or its principals.

14. Plaintiff's claims are barred by ratification, express or implied, by HTP or the members of HyTech's board appointed by HTP.

16. Plaintiff has failed to mitigate its claimed damages.

18. Plaintiff's claims are barred, in whole or in part, because there was a bona fide dispute over Plaintiff's right to wages.

PRAYER FOR RELIEF

A. Dismissal of each of the causes of action with prejudice;

C. An award of reasonable attorneys' fees to the extent allowed by law; and

D. Such other and further relief as the Court deems just and proper.

1
2 DATED: June 9, 2021

By: s/ Nicholas P. Gellert

By: s/ Deborah J. Phillips

Nicholas P. Gellert #18041

Deborah J. Phillips #8540

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Margaret A. Clark, Co-Personal Representatives
9 of the Estate of S.B. Joseph Clark
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